

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:

B-216438

DATE: September 24, 1984**MATTER OF:**

AT&T Information Systems, Inc.

DIGEST:

1. Protest that agency should have used negotiated procurement procedures instead of formally advertised ones, filed after bid opening, is untimely, since it concerns an apparent solicitation impropriety and thus had to be raised before bids were opened.
2. GAO will not consider an untimely protest under the exception to GAO's timeliness rules for significant issues where the protest does not raise an issue of wide-spread interest or importance to the procurement community which has not been considered on the merits in previous decisions.

AT&T Information Systems, Inc. protests the Department of the Navy's use of formal advertising instead of negotiated procurement procedures to purchase, through solicitation No. N62474-84-B-4539, a digital electronic private automatic branch exchange system for the Marine Corps at Camp Pendleton, California. We dismiss the protest.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), require that a protest based on an alleged solicitation impropriety that is apparent prior to bid opening be filed before that date. Since the Navy's use of formal advertising was evident when AT&T received the solicitation, the protest, filed after bids were opened, is untimely.

AT&T requests that we nevertheless consider the issue under the exception to our timeliness rules for significant issues. See 4 C.F.R. § 21.2(c). The bases for the request

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are that the protester "anticipates protests of several [similar] procurements for the same reason," and that the issue allegedly is of particular interest because the recently-enacted Competition in Contracting Act of 1984 "places negotiation on the same level of desirability as advertised procurement," in contrast to the current statutory preference for formal advertising. See 10 U.S.C. § 2304(a) (1982).

We find no merit to this request. We will review an untimely protest under the significant-issue exception only where the matter raised is one of widespread interest to the procurement community which has not been considered on the merits in previous decisions. Northrop Worldwide Aircraft Services, Inc., B-212257.2, Dec. 7, 1983, 83-2 CPD ¶ 655. The question of whether a particular procurement should be conducted by negotiation or formal advertising depends for the most part on the special facts and circumstances of each case. See CMD, Inc.; DMC, Inc., B-209742, May 25, 1983, 83-1 CPD ¶ 565. The question here is not, in our view, of widespread interest to the procurement community, nor does it affect a broad class of procurements, simply because a firm that acquiesced in the procurement method used, protesting the method only after finding that it was not going to win the competition, expects to raise the same issue in other procurements.

As to the Competition in Contracting Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (1984), which in section 2723 does delete the current statutory preference for formally advertised procurements, the 1984 legislation applies only to solicitations issued after March 31, 1985. (See section 2751.) We do not see how the fact that the legal framework for decisions on procurement approaches will change in the future makes a protest of the approach taken under the current framework of widespread interest.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel